

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1536

Introduced by Senator Leno

February 24, 2012

An act to amend Section ~~43.7 of the Civil Code~~ 4030 of the Penal Code, relating to ~~personal rights~~ searches.

LEGISLATIVE COUNSEL'S DIGEST

SB 1536, as amended, Leno. ~~Personal rights; liability. Strip or body cavity search of detained persons.~~

Existing law establishes a statewide policy strictly limiting strip and body cavity searches of prearrest detainees arrested for infraction or misdemeanor offenses and to minors detained prior to a detention hearing on the grounds that he or she is alleged to have committed a misdemeanor or infraction offense. Existing law prohibits a person arrested and held in custody on a misdemeanor or infraction offense not involving weapons, controlled substances, or violence, from being confined in the general jail population unless prescribed conditions apply, including the person not being released on his or her own recognizance and the person not being able to post bail within a reasonable time, not less than 3 hours. Under existing law, a person who knowingly and willfully authorizes or conducts a strip, visual, or physical body cavity search in violation of the prescribed provisions is guilty of a misdemeanor.

This bill would prohibit a person arrested and held in custody on a misdemeanor or infraction offense not involving weapons, controlled substances, or violence, from being confined in the general jail population unless a judge or magistrate has determined that the person does not qualify to be released on his or her own recognizance and

that, after being given a chance to post bail, the person is not able to do so within a reasonable time. By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law governs personal rights and civil liability for violation of those rights. Existing law provides that there is no monetary liability on the part of, and no cause of action for damages against, specified health-related professional societies and members of a duly appointed committee of a mental health professional quality assurance committee or medical specialty society, or any member of a duly appointed committee of a state or local health-related professional society, or duly appointed member of a committee of a professional staff of a licensed hospital for an act performed within the scope of the functions of peer review, as provided.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4030 of the Penal Code is amended to
2 read:
3 4030. (a) The Legislature finds and declares that law
4 enforcement policies and practices for conducting strip or body
5 cavity searches of detained persons vary widely throughout
6 California. Consequently, some people have been arbitrarily
7 subjected to unnecessary strip and body cavity searches after arrests
8 for minor misdemeanor and infraction offenses. Some present
9 search practices violate state and federal constitutional rights to
10 privacy and freedom from unreasonable searches and seizures.
11 It is the intent of the Legislature in enacting this section to protect
12 the state and federal constitutional rights of the people of California
13 by establishing a statewide policy strictly limiting strip and body
14 cavity searches.

(b) The provisions of this section shall apply only to prearrest detainees arrested for infraction or misdemeanor offenses and to ~~any~~ a minor detained prior to a detention hearing on the grounds that he or she is a person described in Section 300, 601, or 602 of the Welfare and Institutions Code alleged to have committed a misdemeanor or infraction offense. The provisions of this section shall not apply to ~~any~~ a person in the custody of the ~~Director of the Department of Corrections and Rehabilitation or the Director of the Youth Authority~~ *Department of Corrections and Rehabilitation, Juvenile Facilities Division*.

(c) As used in this section, “strip search” means a search ~~which~~ *that* requires a person to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of ~~such~~ *the* person.

(d) As used in this section:

(1) “Body cavity” only means the stomach or rectal cavity of a person, and vagina of a female person.

(2) “Visual body cavity search” means visual inspection of a body cavity.

(3) “Physical body cavity search” means physical intrusion into a body cavity for the purpose of discovering ~~any~~ *an* object concealed in the body cavity.

(e) Notwithstanding any other provision of law, including Section 40304.5 of the Vehicle Code, when a person is arrested and taken into custody, that person may be subjected to patdown searches, metal detector searches, and thorough clothing searches in order to discover and retrieve concealed weapons and contraband substances prior to being placed in a booking cell.

(f) No person arrested and held in custody on a misdemeanor or infraction offense, except those involving weapons, controlled substances, or violence nor any minor detained prior to a detention hearing on the grounds that he or she is a person described in Section 300, 601 or 602 of the Welfare and Institutions Code, except for those minors alleged to have committed felonies or offenses involving weapons, controlled substances or violence, shall be subjected to a strip search or visual body cavity search prior to placement in the general jail population, unless a peace officer has determined there is reasonable suspicion based on specific and articulable facts to believe ~~such~~ *the* person is concealing a weapon or contraband, and a strip search will result

1 in the discovery of the weapon or contraband. No strip search or
2 visual body cavity search or both may be conducted without the
3 prior written authorization of the supervising officer on duty. The
4 authorization shall include the specific and articulable facts and
5 circumstances upon which the reasonable suspicion determination
6 was made by the supervisor.

7 (g) (1) Except pursuant to the provisions of paragraph (2), no
8 person arrested and held in custody on a misdemeanor or infraction
9 offense not involving weapons, controlled substances, or violence,
10 shall be confined in the general jail population unless all of the
11 following are true:

12 (i) The person is not cited and released.

13 (ii) ~~The person is not released.~~ *A judge or magistrate has*
14 *determined that the person does not qualify for release* on his or
15 her own recognizance pursuant to Article 9 (commencing with
16 Section 1318) of Chapter 1 of Title 10 of Part 2.

17 (iii) ~~The~~ *Once a determination has been made that the person*
18 *does not qualify for release on his or her own recognizance, and*
19 *the person has been given the opportunity to post bail, the person*
20 is not able to post bail within a reasonable time not less than three
21 hours.

22 (2) No person may be housed in the general jail population prior
23 to release pursuant to the provisions of paragraph (1) unless a
24 documented emergency exists and there is no reasonable alternative
25 to ~~such~~ *that* placement. ~~Such~~ *The person shall be placed in the*
26 *general population only upon prior written authorization*
27 *documenting the specific facts and circumstances of the emergency.*
28 *The written authorization shall be signed by the uniformed*
29 *supervisor of the facility or by a uniformed watch commander.*
30 ~~Any~~ *A person confined in the general jail population pursuant to*
31 *paragraph (1) shall retain all rights to release on citation, his or*
32 *her own recognizance, or bail* ~~which~~ *that* were preempted as a
33 consequence of the emergency.

34 (h) No person arrested on a misdemeanor or infraction offense,
35 nor ~~any~~ *a* minor described in subdivision (b), shall be subjected
36 to a physical body cavity search except under the authority of a
37 search warrant issued by a magistrate specifically authorizing the
38 physical body cavity search.

39 (i) A copy of the prior written authorization required by
40 subdivisions (f) and (g) and the search warrant required by

subdivision (h) shall be placed in the agency's records and made available, on request, to the person searched or his or her authorized representative. With regard to ~~any~~ a strip, visual, or body search, the time, date and place of the search, the name and sex of the person conducting the search, and a statement of the results of the search, including a list of any items removed from the person searched, shall be recorded in the agency's records and made available, upon request, to the person searched or his or her authorized representative.

(j) Persons conducting a strip search or a visual body cavity search shall not touch the breasts, buttocks, or genitalia of the person being searched.

(k) A physical body cavity search shall be conducted under sanitary conditions, and only by a physician, nurse practitioner, registered nurse, licensed vocational nurse, or emergency medical technician Level II licensed to practice in this state. ~~Any~~ A physician engaged in providing health care to detainees and inmates of the facility may conduct physical body cavity searches.

(l) All persons conducting or otherwise present during a strip search or visual or physical body cavity search shall be of the same sex as the person being searched, except for physicians or licensed medical personnel.

(m) All strip, visual, and physical body cavity searches shall be conducted in an area of privacy so that the search cannot be observed by persons not participating in the search. ~~Persons are~~ A person is considered to be participating in the search if ~~their~~ his or her official duties relative to search procedure ~~require them~~ requires him or her to be present at the time the search is conducted.

(n) A person who knowingly and willfully authorizes or conducts a strip, visual, or physical body cavity search in violation of this section is guilty of a misdemeanor.

(o) Nothing in this section shall be construed as limiting any common law or statutory rights of ~~any~~ a person regarding ~~any~~ an action for damages or injunctive relief, or as precluding the prosecution under another provision of law of ~~any~~ a peace officer or other person who has violated this section.

(p) ~~Any~~ A person who suffers damage or harm as a result of a violation of this section may bring a civil action to recover actual damages, or one thousand dollars (\$1,000), whichever is greater.

1 In addition, the court may, in its discretion, award punitive
2 damages, equitable relief as it deems necessary and proper, and
3 costs, including reasonable attorney's fees.

4 *SEC. 2. No reimbursement is required by this act pursuant to*
5 *Section 6 of Article XIII B of the California Constitution because*
6 *the only costs that may be incurred by a local agency or school*
7 *district will be incurred because this act creates a new crime or*
8 *infraction, eliminates a crime or infraction, or changes the penalty*
9 *for a crime or infraction, within the meaning of Section 17556 of*
10 *the Government Code, or changes the definition of a crime within*
11 *the meaning of Section 6 of Article XIII B of the California*
12 *Constitution.*

13 ~~SECTION 1. Section 43.7 of the Civil Code is amended to~~
14 ~~read:~~

15 ~~43.7. (a) There shall be no monetary liability on the part of,~~
16 ~~and no cause of action for damages shall arise against, any member~~
17 ~~of a duly appointed mental health professional quality assurance~~
18 ~~committee that is established in compliance with Section 4070 of~~
19 ~~the Welfare and Institutions Code, for any act or proceeding~~
20 ~~undertaken or performed within the scope of the functions of the~~
21 ~~committee which is formed to review and evaluate the adequacy,~~
22 ~~appropriateness, or effectiveness of the care and treatment planned~~
23 ~~for, or provided to, mental health patients in order to improve~~
24 ~~quality of care by mental health professionals if the committee~~
25 ~~member acts without malice, has made a reasonable effort to obtain~~
26 ~~the facts of the matter as to which he or she acts, and acts in~~
27 ~~reasonable belief that the action taken by him or her is warranted~~
28 ~~by the facts known to him or her after the reasonable effort to~~
29 ~~obtain facts.~~

30 ~~(b) There shall be no monetary liability on the part of, and no~~
31 ~~cause of action for damages shall arise against, any professional~~
32 ~~society, any member of a duly appointed committee of a medical~~
33 ~~specialty society, or any member of a duly appointed committee~~
34 ~~of a state or local professional society, or duly appointed member~~
35 ~~of a committee of a professional staff of a licensed hospital~~
36 ~~(provided that the professional staff operates pursuant to written~~
37 ~~bylaws that have been approved by the governing board of the~~
38 ~~hospital), for any act or proceeding undertaken or performed within~~
39 ~~the scope of the functions of the committee that is formed to~~
40 ~~maintain the professional standards of the society established by~~

1 its bylaws, or any member of any peer review committee whose
2 purpose is to review the quality of medical, dental, dietetic,
3 chiropractic, optometric, acupuncture, psychotherapy, or veterinary
4 services rendered by physicians and surgeons, dentists, dental
5 hygienists, podiatrists, registered dietitians, chiropractors,
6 optometrists, acupuncturists, veterinarians, marriage and family
7 therapists, professional clinical counselors, or psychologists, which
8 is composed chiefly of physicians and surgeons, dentists, dental
9 hygienists, podiatrists, registered dietitians, chiropractors,
10 optometrists, acupuncturists, veterinarians, marriage and family
11 therapists, professional clinical counselors, or psychologists for
12 any act or proceeding undertaken or performed in reviewing the
13 quality of medical, dental, dietetic, chiropractic, optometric,
14 acupuncture, psychotherapy, or veterinary services rendered by
15 physicians and surgeons, dentists, dental hygienists, podiatrists,
16 registered dietitians, chiropractors, optometrists, acupuncturists,
17 veterinarians, marriage and family therapists, professional clinical
18 counselors, or psychologists or any member of the governing board
19 of a hospital in reviewing the quality of medical services rendered
20 by members of the staff if the professional society, committee, or
21 board member acts without malice, has made a reasonable effort
22 to obtain the facts of the matter as to which he, she, or it acts, and
23 acts in reasonable belief that the action taken by him, her, or it is
24 warranted by the facts known to him, her, or it after the reasonable
25 effort to obtain facts. “Professional society” includes legal, medical,
26 psychological, dental, dental hygiene, dietetic, accounting,
27 optometric, acupuncture, podiatric, pharmaceutic, chiropractic,
28 physical therapist, veterinary, licensed marriage and family therapy,
29 licensed clinical social work, licensed professional clinical
30 counselor, and engineering organizations having as members at
31 least 25 percent of the eligible persons or licentiates in the
32 geographic area served by the particular society. However, if the
33 society has fewer than 100 members, it shall have as members at
34 least a majority of the eligible persons or licentiates in the
35 geographic area served by the particular society.

36 “Medical specialty society” means an organization having as
37 members at least 25 percent of the eligible physicians and surgeons
38 within a given professionally recognized medical specialty in the
39 geographic area served by the particular society.

1 ~~(e) This section does not affect the official immunity of an~~
2 ~~officer or employee of a public corporation.~~

3 ~~(d) There shall be no monetary liability on the part of, and no~~
4 ~~cause of action for damages shall arise against, any physician and~~
5 ~~surgeon, podiatrist, or chiropractor who is a member of an~~
6 ~~underwriting committee of an interindemnity or reciprocal or~~
7 ~~interinsurance exchange or mutual company for any act or~~
8 ~~proceeding undertaken or performed in evaluating physicians and~~
9 ~~surgeons, podiatrists, or chiropractors for the writing of~~
10 ~~professional liability insurance, or any act or proceeding undertaken~~
11 ~~or performed in evaluating physicians and surgeons for the writing~~
12 ~~of an interindemnity, reciprocal, or interinsurance contract as~~
13 ~~specified in Section 1280.7 of the Insurance Code, if the evaluating~~
14 ~~physician and surgeon, podiatrist, or chiropractor acts without~~
15 ~~malice, has made a reasonable effort to obtain the facts of the~~
16 ~~matter as to which he or she acts, and acts in reasonable belief that~~
17 ~~the action taken by him or her is warranted by the facts known to~~
18 ~~him or her after the reasonable effort to obtain the facts.~~

19 ~~(e) This section shall not be construed to confer immunity from~~
20 ~~liability on any quality assurance committee established in~~
21 ~~compliance with Section 4070 of the Welfare and Institutions Code~~
22 ~~or hospital. In any case in which, but for the enactment of the~~
23 ~~preceding provisions of this section, a cause of action would arise~~
24 ~~against a quality assurance committee established in compliance~~
25 ~~with Section 4070 of the Welfare and Institutions Code or hospital,~~
26 ~~the cause of action shall exist as if the preceding provisions of this~~
27 ~~section had not been enacted.~~